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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2565

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State of Washington

62nd Legislature

2012 Regular Session

**By** House Ways & Means (originally sponsored by Representatives Kirby, Harris, Dammeier, Walsh, Orwall, Kelley, Moscoso, and Zeiger)

READ FIRST TIME 02/27/12.

1       AN ACT Relating to persons who operate a roll-your-own cigarette  
2 machine at retail establishments; amending RCW 82.24.010, 82.24.030,  
3 82.24.035, 82.24.050, 82.24.060, 82.24.110, 82.24.120, 82.24.180,  
4 82.24.295, 82.24.500, and 82.24.530; reenacting and amending RCW  
5 82.24.130; prescribing penalties; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7       **Sec. 1.** RCW 82.24.010 and 1997 c 420 s 3 are each amended to read  
8 as follows:

9       Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter:

11       (1) "Board" means the liquor control board.

12       (2) "Cigarette" means any roll for smoking made wholly or in part  
13 of tobacco, irrespective of size or shape and irrespective of the  
14 tobacco being flavored, adulterated, or mixed with any other  
15 ingredient, where such roll has a wrapper or cover made of paper or any  
16 material, except where such wrapper is wholly or in the greater part  
17 made of natural leaf tobacco in its natural state. "Cigarette"  
18 includes a roll-your-own cigarette.

1       (3) "Cigarette paper" means any paper or any other material except  
2 tobacco, prepared for use as a cigarette wrapper.

3       (4) "Cigarette tube" means cigarette paper made into a hollow  
4 cylinder for use in making cigarettes.

5       (5) "Commercial cigarette-making machine" means a machine that is  
6 operated in a retail establishment and that is capable of being loaded  
7 with loose tobacco, cigarette paper or tubes, and any other components  
8 related to the production of roll-your-own cigarettes, including  
9 filters.

10       (6) "Indian tribal organization" means a federally recognized  
11 Indian tribe, or tribal entity, and includes an Indian wholesaler or  
12 retailer that is owned by an Indian who is an enrolled tribal member  
13 conducting business under tribal license or similar tribal approval  
14 within Indian country. For purposes of this chapter "Indian country"  
15 is defined in the manner set forth in 18 U.S.C. Sec. 1151.

16       (~~(4)~~) (7) "Precollection obligation" means the obligation of a  
17 seller otherwise exempt from the tax imposed by this chapter to collect  
18 the tax from that seller's buyer.

19       (~~(5)~~) (8) "Retailer" means every person, other than a wholesaler,  
20 who purchases, sells, offers for sale or distributes any one or more of  
21 the articles taxed herein, irrespective of quantity or amount, or the  
22 number of sales, and all persons operating under a retailer's  
23 registration certificate.

24       (~~(6)~~) (9) "Retail selling price" means the ordinary, customary or  
25 usual price paid by the consumer for each package of cigarettes, less  
26 the tax levied by this chapter and less any similar tax levied by this  
27 state.

28       (~~(7)~~) (10) "Roll-your-own cigarettes" means cigarettes produced  
29 by a commercial cigarette-making machine.

30       (11) "Stamp" means the stamp or stamps by use of which the tax levy  
31 under this chapter is paid or identification is made of those  
32 cigarettes with respect to which no tax is imposed.

33       (~~(8)~~) (12) "Wholesaler" means every person who purchases, sells,  
34 or distributes any one or more of the articles taxed herein to  
35 retailers for the purpose of resale only.

36       (~~(9)~~) (13) The meaning attributed, in chapter 82.04 RCW, to the  
37 words "person," "sale," "business" and "successor" applies equally in  
38 this chapter.

1       **Sec. 2.** RCW 82.24.030 and 2003 c 114 s 2 are each amended to read  
2 as follows:

3       (1) In order to enforce collection of the tax hereby levied, the  
4 department of revenue (~~shall~~) must design and have printed stamps of  
5 such size and denominations as may be determined by the department.  
6 The stamps must be affixed on the smallest container or package that  
7 will be handled, sold, used, consumed, or distributed, to permit the  
8 department to readily ascertain by inspection, whether or not such tax  
9 has been paid or whether an exemption from the tax applies.

10       (2) Except as otherwise provided in this chapter, only a wholesaler  
11 (~~shall~~) may cause to be affixed on every package of cigarettes,  
12 stamps of an amount equaling the tax due thereon or stamps identifying  
13 the cigarettes as exempt before he or she sells, offers for sale, uses,  
14 consumes, handles, removes, or otherwise disturbs and distributes the  
15 same(~~:-PROVIDED,-That~~). However, where it is established to the  
16 satisfaction of the department that it is impractical to affix such  
17 stamps to the smallest container or package, the department may  
18 authorize the affixing of stamps of appropriate denomination to a large  
19 container or package.

20       (3) Except as otherwise provided in this chapter, only wholesalers  
21 may purchase or obtain cigarette stamps. Wholesalers (~~shall~~) may not  
22 sell or provide stamps to any other wholesaler or person.

23       (4) Each roll of stamps, or group of sheets, (~~shall~~) must have a  
24 separate serial number, which (~~shall be~~) is legible at the point of  
25 sale. The department of revenue (~~shall~~) must keep records of which  
26 wholesaler purchases each roll or group of sheets. If the department  
27 of revenue permits wholesalers to purchase partial rolls or sheets, in  
28 no case may stamps bearing the same serial number be sold to more than  
29 one wholesaler. The remainder of the roll or sheet, if any, (~~shall~~)  
30 must either be retained for later purchases by the same wholesaler or  
31 destroyed.

32       (5) Nothing in this section (~~shall~~) may be construed as limiting  
33 any otherwise lawful activity under a cigarette tax compact pursuant to  
34 chapter 43.06 RCW.

35       (6) In order to enforce collection of the tax in the case of roll-  
36 your-own cigarettes, a retailer must affix a stamp or stamps to each  
37 box or similar container provided by the retailer to the consumer. The  
38 box or similar container must be used by a consumer to transport roll-

1 your-own cigarettes from the retailer's place of business. A retailer  
2 must provide cigarette tubes to a consumer in one or more twenty unit  
3 denominations. Stamps must be for an amount equaling the tax due under  
4 this chapter. Each cigarette tube or paper provided to the consumer is  
5 deemed a cigarette for purposes of imposing and collecting taxes under  
6 this chapter. Stamps for roll-your-own cigarettes must be issued and  
7 affixed in a manner determined by the department but as consistent as  
8 practicable with the stamping requirements for wholesalers.

9       **Sec. 3.** RCW 82.24.035 and 1999 c 193 s 5 are each amended to read  
10 as follows:

11       (1) No stamp may be affixed to, or made upon, any container or  
12 package of cigarettes if:

13       (a) The container or package differs in any respect with the  
14 requirements of the federal cigarette labeling and advertising act (15  
15 U.S.C. Sec. 1331 et seq.) for the placement of labels, warnings, or any  
16 other information upon a package of cigarettes that is to be sold  
17 within the United States;

18       (b) The container or package has been imported into the United  
19 States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

20       (c) The container or package, including a container of individually  
21 stamped containers or packages, is labeled "For Export Only," "U.S. Tax  
22 Exempt," "For Use Outside U.S.," or similar wording indicating that the  
23 manufacturer did not intend that the product be sold in the United  
24 States; or

25       (d) The container or package has been altered by adding or deleting  
26 the wording, labels, or warnings described in (a) or (c) of this  
27 subsection.

28       (2) In addition to the penalty and forfeiture provisions otherwise  
29 provided for in this chapter, a violation of this section is a  
30 deceptive act or practice under the consumer protection act, chapter  
31 19.86 RCW.

32       (3) Subsection (1)(a) of this section does not apply to boxes or  
33 similar containers used by a consumer to transport roll-your-own  
34 cigarettes.

35       **Sec. 4.** RCW 82.24.050 and 2003 c 114 s 4 are each amended to read  
36 as follows:

1 (1) No retailer in this state may possess unstamped cigarettes  
2 within this state unless the person is also a wholesaler in possession  
3 of the cigarettes in accordance with RCW 82.24.040.

4 (2) A retailer may obtain cigarettes only from a wholesaler subject  
5 to the provisions of this chapter.

6 (3) Only a retailer licensed under this chapter may provide  
7 consumers with access to a commercial cigarette-making machine to make  
8 roll-your-own cigarettes. A retailer is prohibited from allowing the  
9 use of a commercial cigarette-making machine by a person unless,  
10 contemporaneously to the person's use of the machine, the retailer  
11 provides the consumer with a box or similar container to transport  
12 roll-your-own cigarettes and such box is affixed with the appropriate  
13 stamp or stamps as required under RCW 82.24.030(6). A consumer must  
14 transport roll-your-own cigarettes from a retailer's place of business  
15 only in such box or similar container.

16 (4) All tobacco used in a commercial cigarette-making machine must  
17 be of a tobacco product manufacturer and brand family listed on the web  
18 site directory of the attorney general under RCW 70.158.030 as having  
19 complied with the certification requirements of that statute.

20 (5) A commercial cigarette-making machine must have a secure meter  
21 that counts the number of cigarettes made, manufactured, or fabricated  
22 by the machine and that cannot be accessed, except for the sole purpose  
23 of taking meter readings, altered or reset by the machine operator.

24 **Sec. 5.** RCW 82.24.060 and 1961 c 15 s 82.24.060 are each amended  
25 to read as follows:

26 (1) Except as otherwise provided in this chapter, stamps ((shall))  
27 must be affixed in such manner that they cannot be removed from the  
28 package or container without being mutilated or destroyed, which stamps  
29 so affixed ((shall be)) are evidence of the tax imposed.

30 (2) In the case of cigarettes contained in individual packages, as  
31 distinguished from cartons or larger units, the stamps ((shall)) must  
32 be affixed securely on each individual package.

33 (3) With respect to roll-your-own cigarettes, stamps must be  
34 affixed securely on each individual box or similar container provided  
35 by the retailer to the consumer.

1       **Sec. 6.** RCW 82.24.110 and 2008 c 226 s 4 are each amended to read  
2 as follows:

3       (1) Each of the following acts is a gross misdemeanor and  
4 punishable as such:

5       (a) To sell, except as a licensed wholesaler engaged in interstate  
6 commerce as to the article being taxed herein, without the stamp first  
7 being affixed;

8       (b) To sell in Washington as a wholesaler to a retailer who does  
9 not possess and is required to possess a current cigarette retailer's  
10 license;

11       (c) To use or have in possession knowingly or intentionally any  
12 forged or counterfeit stamps;

13       (d) For any person other than the department of revenue or its duly  
14 authorized agent to sell any stamps not affixed to any of the articles  
15 taxed herein whether such stamps are genuine or counterfeit;

16       (e) For any person other than the department of revenue, its duly  
17 authorized agent, or a licensed wholesaler who has lawfully purchased  
18 or obtained them to possess any stamps not affixed to any of the  
19 articles taxed herein whether such stamps are genuine or counterfeit;

20       (f) To violate any of the provisions of this chapter;

21       (g) To violate any lawful rule made and published by the department  
22 of revenue or the board;

23       (h) To use any stamps more than once or any individual stamped box  
24 or similar container used to transport roll-your-own cigarettes more  
25 than once;

26       (i) To refuse to allow the department of revenue or its duly  
27 authorized agent, on demand, to make full inspection of any place of  
28 business where any of the articles herein taxed are sold or otherwise  
29 hinder or prevent such inspection;

30       (j) Except as otherwise provided in this chapter, for any retailer  
31 to have in possession in any place of business any of the articles  
32 herein taxed, unless the same have the proper stamps attached;

33       (k) For any person to make, use, or present or exhibit to the  
34 department of revenue or its duly authorized agent, any invoice for any  
35 of the articles herein taxed which bears an untrue date or falsely  
36 states the nature or quantity of the goods therein invoiced;

37       (l) For any wholesaler or retailer or his or her agents or  
38 employees to fail to produce on demand of the department of revenue all

1 invoices of all the articles herein taxed or stamps bought by him or  
2 her or received in his or her place of business within five years prior  
3 to such demand unless he or she can show by satisfactory proof that the  
4 nonproduction of the invoices was due to causes beyond his or her  
5 control;

6 (m) For any person to receive in this state any shipment of any of  
7 the articles taxed herein, when the same are not stamped, for the  
8 purpose of avoiding payment of tax. It is presumed that persons other  
9 than dealers who purchase or receive shipments of unstamped cigarettes  
10 do so to avoid payment of the tax imposed herein;

11 (n) For any person to possess or transport in this state a quantity  
12 of ten thousand cigarettes or less unless the proper stamps required by  
13 this chapter have been affixed or unless: (i) Notice of the possession  
14 or transportation has been given as required by RCW 82.24.250; (ii) the  
15 person transporting the cigarettes has in actual possession invoices or  
16 delivery tickets which show the true name and address of the consignor  
17 or seller, the true name and address of the consignee or purchaser, and  
18 the quantity and brands of the cigarettes so transported; and (iii) the  
19 cigarettes are consigned to or purchased by any person in this state  
20 who is authorized by this chapter to possess unstamped cigarettes in  
21 this state;

22 (o) For any person to possess or receive in this state a quantity  
23 of ten thousand cigarettes or less unless the proper stamps required by  
24 this chapter have been affixed or unless the person is authorized by  
25 this chapter to possess unstamped cigarettes in this state and is in  
26 compliance with the requirements of this chapter; (~~and~~))

27 (p) To possess, sell, distribute, purchase, receive, ship, or  
28 transport within this state any container or package of cigarettes that  
29 does not comply with this chapter; and

30 (q) For a retailer to:

31 (i) Provide consumers with access to a commercial cigarette-making  
32 machine without providing a box or similar container that has a  
33 properly affixed stamp or stamps; or

34 (ii) Allow a consumer to use a commercial cigarette-making machine  
35 for use in making roll-your-own cigarettes with tobacco that is not of  
36 a tobacco product manufacturer and brand family listed on the web site  
37 directory of the attorney general pursuant to RCW 70.158.030 as having  
38 complied with the certification requirements of that statute.

1 (2) It is unlawful for any person knowingly or intentionally to  
2 possess or to:

3 (a) Transport in this state a quantity in excess of ten thousand  
4 cigarettes unless the proper stamps required by this chapter are  
5 affixed thereto or unless: (i) Proper notice as required by RCW  
6 82.24.250 has been given; (ii) the person transporting the cigarettes  
7 actually possesses invoices or delivery tickets showing the true name  
8 and address of the consignor or seller, the true name and address of  
9 the consignee or purchaser, and the quantity and brands of the  
10 cigarettes so transported; and (iii) the cigarettes are consigned to or  
11 purchased by a person in this state who is authorized by this chapter  
12 to possess unstamped cigarettes in this state; or

13 (b) Receive in this state a quantity in excess of ten thousand  
14 cigarettes unless the proper stamps required by this chapter are  
15 affixed thereto or unless the person is authorized by this chapter to  
16 possess unstamped cigarettes in this state and is in compliance with  
17 this chapter.

18 (3) Violation of (~~this~~) subsection (2) (~~shall-be~~) of this  
19 section is punished as a class C felony under Title 9A RCW.

20 (~~(3)~~) (4) All agents, employees, and others who aid, abet, or  
21 otherwise participate in any way in the violation of the provisions of  
22 this chapter or in any of the offenses described in this chapter  
23 (~~shall-be~~) are guilty and punishable as principals, to the same  
24 extent as any wholesaler or retailer or any other person violating this  
25 chapter.

26 (~~(4)~~) (5) For purposes of this section, "person authorized by  
27 this chapter to possess unstamped cigarettes in this state" has the  
28 same meaning as in RCW 82.24.250.

29 **Sec. 7.** RCW 82.24.120 and 2007 c 111 s 102 are each amended to  
30 read as follows:

31 (1) If any person, subject to the provisions of this chapter or any  
32 rules adopted by the department of revenue under authority (~~hereof~~)  
33 of this section, is found to have failed to affix the stamps required,  
34 or to have them affixed as (~~herein~~) provided in this section, or to  
35 pay any tax due (~~hereunder~~) under this section, or to have violated  
36 any of the provisions of this chapter or rules adopted by the  
37 department of revenue in the administration (~~hereof~~) of this chapter,

1 there (~~shall~~) must be assessed and collected from such person, in  
2 addition to any tax that may be found due, a remedial penalty equal to  
3 the greater of ten dollars per package of unstamped cigarettes or ten  
4 dollars per twenty roll-your-own cigarettes, or two hundred fifty  
5 dollars, plus interest on the amount of the tax at the rate as computed  
6 under RCW 82.32.050(2) from the date the tax became due until the date  
7 of payment, and upon notice mailed to the last known address of the  
8 person or provided electronically as provided in RCW 82.32.135. The  
9 amount (~~shall become~~) is due and payable in thirty days from the date  
10 of the notice. If the amount remains unpaid, the department or its  
11 duly authorized agent may make immediate demand upon such person for  
12 the payment of all such taxes, penalties, and interest.

13 (2) The department, for good reason shown, may waive or cancel all  
14 or any part of penalties imposed, but the taxpayer must pay all taxes  
15 due and interest thereon, at the rate as computed under RCW  
16 82.32.050(2) from the date the tax became due until the date of  
17 payment.

18 (3) The keeping of any unstamped articles coming within the  
19 provisions of this chapter (~~shall be~~) is prima facie evidence of  
20 intent to violate the provisions of this chapter.

21 (4) This section does not apply to taxes or tax increases due under  
22 RCW 82.24.280.

23 **Sec. 8.** RCW 82.24.130 and 2003 c 114 s 7, 2003 c 113 s 4, and 2003  
24 c 25 s 9 are each reenacted and amended to read as follows:

25 (1) The following are subject to seizure and forfeiture:

26 (a) Subject to RCW 82.24.250, any articles taxed in this chapter  
27 that are found at any point within this state, which articles are held,  
28 owned, or possessed by any person, and that do not have the stamps  
29 affixed to the packages or containers; any container or package of  
30 cigarettes possessed or held for sale that does not comply with this  
31 chapter; and any container or package of cigarettes that is  
32 manufactured, sold, or possessed in violation of RCW 82.24.570.

33 (b) All conveyances, including aircraft, vehicles, or vessels,  
34 which are used, or intended for use, to transport, or in any manner to  
35 facilitate the transportation, for the purpose of sale or receipt of  
36 property described in (a) of this subsection, except:

1 (i) A conveyance used by any person as a common or contract carrier  
2 having in actual possession invoices or delivery tickets showing the  
3 true name and address of the consignor or seller, the true name of the  
4 consignee or purchaser, and the quantity and brands of the cigarettes  
5 transported, unless it appears that the owner or other person in charge  
6 of the conveyance is a consenting party or privy to a violation of this  
7 chapter;

8 (ii) A conveyance subject to forfeiture under this section by  
9 reason of any act or omission of which the owner thereof establishes to  
10 have been committed or omitted without his or her knowledge or consent;

11 (iii) A conveyance encumbered by a bona fide security interest if  
12 the secured party neither had knowledge of nor consented to the act or  
13 omission.

14 (c) Any vending machine or commercial cigarette-making machine used  
15 for the purpose of violating the provisions of this chapter.

16 (d) Any cigarettes that are stamped, sold, imported, or offered or  
17 possessed for sale in this state in violation of RCW 70.158.030(3).  
18 For the purposes of this subsection (1)(d), "cigarettes" has the  
19 meaning as provided in RCW 70.158.020(3).

20 ~~((e) All cigarettes sold, delivered, or attempted to be delivered  
21 in violation of RCW 70.155.105.))~~

22 (2) Property subject to forfeiture under this chapter may be seized  
23 by any agent of the department authorized to collect taxes, any  
24 enforcement officer of the board, or law enforcement officer of this  
25 state upon process issued by any superior court or district court  
26 having jurisdiction over the property. Seizure without process may be  
27 made if:

28 (a) The seizure is incident to an arrest or a search under a search  
29 warrant or an inspection under an administrative inspection warrant; or

30 (b) The department, the board, or the law enforcement officer has  
31 probable cause to believe that the property was used or is intended to  
32 be used in violation of this chapter and exigent circumstances exist  
33 making procurement of a search warrant impracticable.

34 (3) Notwithstanding the foregoing provisions of this section,  
35 articles taxed in this chapter which are in the possession of a  
36 wholesaler, licensed under Washington state law, for a period of time  
37 necessary to affix the stamps after receipt of the articles, ~~((shall))~~

1 are not (~~be~~) considered contraband unless they are manufactured,  
2 sold, or possessed in violation of RCW 82.24.570.

3 **Sec. 9.** RCW 82.24.180 and 1996 c 149 s 8 are each amended to read  
4 as follows:

5 (1) The department of revenue may return any property seized under  
6 the provisions of this chapter when it is shown that there was no  
7 intention to violate the provisions thereof.

8 (2) When any property is returned under this section, the  
9 department may return such goods to the parties from whom they were  
10 seized if and when such parties affix the proper amount of stamps  
11 thereto, and pay to the department as penalty an amount equal to the  
12 greater of ten dollars per package of unstamped cigarettes or ten  
13 dollars per twenty roll-your-own cigarettes, or two hundred fifty  
14 dollars, and interest on the amount of the tax at the rate as computed  
15 under RCW 82.32.050(2) from the date the tax became due until the date  
16 of payment, and in such cases, no advertisement shall be made or  
17 notices posted in connection with said seizure.

18 **Sec. 10.** RCW 82.24.295 and 2001 c 235 s 6 are each amended to read  
19 as follows:

20 (1) The taxes imposed by this chapter do not apply to the sale,  
21 use, consumption, handling, possession, or distribution of cigarettes  
22 by an Indian retailer during the effective period of a cigarette tax  
23 contract subject to RCW 43.06.455.

24 (2) Effective July 1, 2002, wholesalers and retailers subject to  
25 the provisions of this chapter (~~shall be~~) are allowed compensation  
26 for their services in affixing the stamps required under this chapter  
27 a sum computed at the rate of six dollars per one thousand stamps  
28 purchased or affixed by them.

29 (3) In addition to the compensation allowed under subsection (2) of  
30 this section, retailers purchasing stamps for roll-your-own cigarettes  
31 are allowed additional compensation to offset the cost of the tax under  
32 chapter 82.26 RCW. The amount equals five cents per cigarette.

33 **Sec. 11.** RCW 82.24.500 and 2003 c 114 s 10 are each amended to  
34 read as follows:

35 No person may engage in or conduct the business of purchasing,

1 selling, consigning, or distributing cigarettes in this state without  
2 a license under this chapter, or providing consumers with access to a  
3 commercial cigarette-making machine without a license under this  
4 chapter. A violation of this section is a class C felony.

5 **Sec. 12.** RCW 82.24.530 and 1993 c 507 s 15 are each amended to  
6 read as follows:

7 A fee of ninety-three dollars (~~shall~~) must accompany each  
8 retailer's license application or license renewal application. A  
9 separate license is required for each separate location at which the  
10 retailer operates. A fee of thirty additional dollars for each vending  
11 machine (~~shall~~) must accompany each application or renewal for a  
12 license issued to a retail dealer operating a cigarette vending  
13 machine. An additional fee of ninety-three dollars shall accompany  
14 each application or renewal for a license issued to a retail dealer  
15 operating a cigarette-making machine.

16 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2012.

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